

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

FITCHBURG GAS AND ELECTRIC
LIGHT COMPANY

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D.T.E. 02-24

**MOTION OF FITCHBURG GAS AND ELECTRIC LIGHT COMPANY
FOR PROTECTIVE TREATMENT**

NOW COMES Fitchburg Gas and Electric Light Company ("FG&E") and respectfully requests that the Department of Telecommunications and Energy ("Department") grant it protection from public disclosure over certain confidential, competitively sensitive and proprietary information submitted in this proceeding in accordance with G.L. c. 25, § 5D. In support of its Motion, FG&E states:

1. On May 17, 2002, FG&E filed revised tariffs and schedules to implement proposed changes to its Gas Division rates and charges. FG&E's filing included supporting testimony of Mr. James L. Harrison, Exhibit FGE-JLH -1.
2. Mr. Harrison's testimony supports a marginal cost of service study and a fully allocated cost of service study for FG&E.
3. In particular to this Motion, both the Department and the Attorney General have requested *Excel* files that would permit them to examine and to test the accuracy and veracity of Mr. Harrison's testimony and recommendations. See e.g. DTE-1-58, DTE-1-59, AG-2-1 (Electric), AG-2-1 (Gas), AG-2-2 (Electric), AG-2-2 (Gas), AG-2-3 (Gas), AG-2-4 (Gas), AG-2-5 (Gas). With regard to DTE-1-58 and AG-2-4 (Gas), the programs contained in these *Excel*

files includes confidential and competitively sensitive natural gas commodity pricing information. Therefore, FG&E requests protection of this information from public disclosure pursuant to Chapter 25, Section 5D of the General Laws of Massachusetts.

4. The *Excel* program that supports Mr. Harrison's Sch. JLH-4 contain the commodity and demand costs of FG&E's gas supplies procured on the competitive market. Because this pricing information constitutes confidential and competitively sensitive business information, and because this information cannot be redacted from the *Excel* program, FG&E seeks protection for the electronic spreadsheet consistent with the protection commonly granted for FG&E's cost of gas adjustment filings. Therefore, FG&E requests protection of this information from public disclosure pursuant to Chapter 25, Section 5D of the General Laws of Massachusetts.

5. G.L. c. 25, § 5D is specifically designed to protect against disclosure of competitively sensitive information. That provision, in part, provides:

[T]he [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D. In determining the existence and extent of such a need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest. Fitchburg Gas and Electric Light Co., D.P.U. 97-5A, p. 4 (1997), citing Berkshire Gas Co., D.P.U. 93-187/188/189/190, p. 16 (1994). The

utility must show need by a specific factual demonstration, and with respect to a price term, must show the manner in which the price term is competitively sensitive. Id. (citations omitted).

6. The Department previously has granted protective orders to protect pricing information in order to avoid informing wholesale suppliers of FG&E's strategy and results from prior negotiations, which, if divulged, would weaken FG&E's bargaining position and potentially increase the cost of procuring resources for FG&E and its ratepayers. Fitchburg Gas and Electric Light Co., D.P.U. 97-5A, pp. 3 and 5 (1997). See also Colonial Gas Co., D.P.U. 96-18, p. 4 (1996) (protected pricing terms in gas supply contract including all reservation fees or charges, demand charges, commodity charges and other pricing information); Fitchburg Gas and Electric Light Co., D.P.U. 95-97, p. 2 (1995) (protected confidential marginal cost information which reflected FG&E's commercially sensitive market transactions, in order to maintain FG&E's competitive position).

7. FG&E's confidential information regarding the prices of its existing gas supplies should be protected from public disclosure because it is commercial, competitively sensitive and proprietary information. FG&E provided assurances to the other parties involved in the negotiations that the price terms would remain confidential. Disclosure of financial or price terms would alert a potential seller of gas of FG&E's assessment of the market and the existing prices in its portfolio, and could jeopardize FG&E's current and future attempts to obtain the lowest price for its gas supplies. This confidential, commercially, sensitive and proprietary information is the type of information that the Department may protect from public disclosure

pursuant to G.L. c. 25, § 5D, and is the type of information that the Department previously has recognized is appropriate for protection. See ¶ 3, supra.

WHEREFORE, Fitchburg Gas and Electric Light Company respectfully requests that the Department of Telecommunications and Energy grant its Motion for Protective Treatment as stated herein, and protect from public disclosure the contents of the disk containing confidential pricing information relative to FG&E's gas supply, as embedded in the electronic *Excel* spreadsheet provided in response to DTE-1-58, AG-2-3 (Gas) and AG-2-4 (Gas).

Respectfully submitted,

**FITCHBURG GAS AND ELECTRIC
LIGHT COMPANY**

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